

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: Burt Ewart and Linda Muerle

Date application filed with the Town Clerk: December 23, 2008

Nature of request: Request Special Permit to keep three horses on the property under Section 5.014 of the Zoning Bylaw

Address: 327 Shays Street (Map 20D, Parcel 28, R-N Zone)

Legal notice: January 26, 2009 and February 2, 2009

Board members: Thomas Simpson, Barbara Ford, Hilda Greenbaum

Submissions:

- One (1) copy of the ZBA application filed with the Town Clerk, December 23, 2008;
- One (1) copy of a Project Summary and Proposed Findings prepared by the applicant, dated December 14, 2008;
- One (1) copy of the completed Management Plan form;
- One (1) copy of the Site Plan prepared by Consulting Design dated November 11, 2008;
- One (1) copy of a GIS map, submitted by staff;
- One (1) aerial photograph, submitted by staff;
- Two (2) copies of GIS maps prepared by the applicant;
- One (1) copy of the email correspondence from Stephanie Ciccarello, Wetlands Administrator, dated December 22, 2008, submitted by staff.

For the Public Hearing, the applicant provided the following:

- One (1) set of six (6) photographs of the property; and
- One (1) copy of a petition in support of the application signed by three (3) property owners.

Site Visit: February 9, 2009

The Board members met Burt Ewart and Linda Muerle on the property. They observed the following:

- A residential property situated on the west side of Shays Street;
- The existing single family dwelling and driveway situated at the top of a steeply sloping property;
- The existing barn located in close proximity to the northerly property line;
- A large cleared area situated at the bottom of the slope used as a horse paddock area and enclosed by a split rail fence;
- The location of the existing solid wood fence along a portion of the north property line;
- The location of the northerly abutting property, the back of which overlooks the horse barn and paddock area; and
- The rear of the property bordering along a fallow farm field.

Public Hearing: February 10, 2009

The application was presented by Burt Ewart and his wife, Linda Muerle. They were accompanied by their daughter. Mr. Ewart presented a poster board containing photographs and provided the Board members with individual packets containing a series of six (6) photographs of the property.

Mr. Ewart stated the following:

- They are seeking a Special Permit to allow them to have three (3) horses on their property at 327 Shays Street;
- The property is located in the R-N Zoning District which, according to the Zoning Bylaw, requires specific approval to allow horses on the property;
- They own the house lot as well as a strip of land at the rear which runs parallel to Shays Street and contains a pond;
- The house was built about three (3) years ago;
- They cleared an area behind the house for a paddock to keep horses and erected a fence with permission of the Town's Conservation Commission;
- They erected a pre-fabricated three-stall shedrow barn on a prepared gravel pad;
- They have been keeping two (2) of their own horses there and occasionally one (1) other horse;
- Last November they were informed by the Building Inspector that a Special Permit was needed to keep the horses;
- They are also seeking to construct an addition to the barn in order to properly store the hay and grain; the addition will replace a temporary tent structure visible from the neighbors' property;
- They are currently keeping a rescued 31 year old Bay State Morgan horse, called Dobbin, on the property; the horse was originally born in Amherst;
- It is important for them to keep the horse on the property as it is part of their family;
- Their daughter also rides horses competitively, his wife rides horses and they are very much committed to keeping horses;
- Before they started clearing the land, they contacted the neighbors and informed them that they were interested in keeping horses;
- He had prepared a project summary and a response to the findings listed in Section 10.38 of the Zoning Bylaw.

Ms. Muerle stated the following:

- They implemented the improvements in multiple steps because they couldn't afford to do it all at once;
- They began with the paddock and the barn; then created the temporary hay storage. They created a permanent hay storage to store six (6) months worth of hay and grain for the horses;
- They are interested in keeping horses on the property because of the strong interest of their daughter;
- They currently own three (3) horses. Dobbin is an older horse who remains on the property. The two (2) other horses they own rotate from time to time between the barn and other larger horse stables in the area; each horse is a lifelong commitment which they want to keep them on their property.

Mr. Simpson asked if they own all three (3) horses. Ms. Muerle confirmed that they own three (3) horses. She added that two (2) of their horses are currently boarded elsewhere and that they are currently keeping two (2) horses on the property; one (1) of their own horses and one (1) of their friends horses.

Mr. Simpson asked if there are any problems if they mix the sexes of horses. Ms. Muerle stated that they will never have a stallion on the property because they require special facilities. They will only keep geldings or possibly a mare which would be separated by an electric fence that runs through the middle of the paddock.

Mr. Simpson asked if any special equipment necessary to maintain the horses and the barn is required. Ms. Muerle stated that they do not require any special equipment, however, noted that in the future they may acquire a small tractor, but do not currently have one. She added that they could use a small tractor to move the stockpiled manure around the property, including to the front yard to be used as fill, fertilizer or soil enrichment.

Mr. Simpson stated that the application identifies a solid eight (8) foot fence and asked the applicant to explain where the fence is located. [Later in the public hearing the applicant identifies that the fence is actually six (6) feet in height and the application incorrectly identifies it as being eight (8) feet tall; see page 5 of 9]. Mr. Ewart stated that the fence is on the back side of the barn as it was seen from the driveway during the site visit. It runs down the north property line; between the property line and the barn and is just about as long as the barn. There is also a split rail fence that runs along the rest of the north property line away from the barn.

Ms. Ford asked if they have another location to put the stored manure. Ms. Muerle noted that it doesn't necessarily stockpile and that if it did, they would use it in the paddock area or give it away. Mr. Ewart stated that many people do spread the manure into the paddock area by tractor, but could anticipate it being taken off the site from time to time.

Ms. Ford asked if they would pasture the rest of their property. Mr. Ewart stated that the rest of the property is mostly forest and wetland and they plan to keep the horses within the paddock area, a common practice.

Mr. Simpson asked if the Conservation Commission has reviewed the paddock and barn area. Mr. Ewart stated that the improvements have been reviewed and approved by the Conservation Commission.

Mr. Simpson asked if they ride the horses from the property. Ms. Muerle stated that they do walk them up the drive way and access some trails nearby like the KC Trail. They also bring the horses to an indoor arena located nearby.

Mr. Simpson asked about the construction of the barn and how they keep the rodents and vermin out of the grain. Mr. Ewart stated that the barn is pre-fabricated using post and beam construction and that all the grains and anything else edible are stored inside metal containers with tight fitting lids.

Ms. Muerle added that any extra food supplies are stored in the garage. The hay is stacked in an enclosed storage area attached to the barn. She stated that the style of barn was chosen because it is long and low and more suitable for the neighborhood and the topography of the property.

Mr. Simpson asked how they prevent the spontaneous combustion of the stored hay. Ms. Muerle stated that they buy hay from a reputable producer who controls the moisture of the hay to avoid combustion. The hay is then stored so that proper air circulation is provided.

Assistant Fire Chief Michael Zlogar was in the audience. He stated that dry hay, properly baled, is the essential element. The only recommendation he had was to consider possible moisture damage to sheetrock. Ms. Weeks stated that the type of drywall used is important and they may wish to consider exterior grade sheetrock.

Ms. Greenbaum asked how long the barn had been on the property. Ms. Muerle stated that the shed was constructed in the fall of 2007 and they started the addition last October.

Ms. Weeks asked where are the buildings on the site plan in relation to the property lines. Mr. Ewart referenced the submitted site plan and stated that the barn is ten (10) feet from the property line and that the height of the barn at the eave is about eight (8) feet high.

Ms. Greenbaum asked what the setback requirement is. Ms. Weeks stated that the barn is a detached accessory structure so it must be setback from the property line equal to its height.

Mr. Ewart stated that he prepared a petition in support of the keeping of three horses on the property signed by Klaus & Ann Becker of 333 Shays Street, Marlene Doyle of 340 Shays Street and Ronald & Betty Rosbottom of 326 Shays Street.

Mr. Simpson asked if there was anyone from the public who would like to speak regarding the application.

Carol Campbell, 299 Shays Street, stated the following:

- It is difficult for her, as a neighbor, to be here before the Board;
- She has watched this unfold for the past few years and has a hard time with the fact that she is here now, and would have preferred to have been here at the onset;
- She feels that the horses are aesthetically beautiful, but the horses and the barn have totally changed the view from her house and doesn't think they are beautiful in a neighborhood setting;
- The smell of the manure in her backyard during the summer puts a restriction on the use of her property;
- A lot of the riding happens across the street on land owned by Amherst College and along the sidewalk on Shays Street where the horses have deposited manure;
- She is concerned about how the use and odor may affect her property value;
- She noted that the applicant told her they wanted to have a little barn and now they have a big barn; they wanted one (1) horse, now they have three (3) horses;
- She is concerned about the value of her property and that it has affected the use of her backyard;
- She asked if there are health concerns related to the practice of spreading of manure that is a year and half old;
- She stated that she was told by the applicant that the manure was being removed once a week, but it turns out that it has been there for a year and a half;
- They have taken down the temporary hay cover, a tarp structure, within the last few weeks;
- She stated that the major part of the value of her house is the view. As she loses her view, she is losing a lot of the reason why she lives in Amherst;
- She noted that the area for the horses seems very small and asked whether there are any requirements for the amount of land required for the keeping of horses;
- Ms. Campbell summarized that her primary concern is the manure and the odor it produces. She added that the aesthetics of the use is her secondary concern. She also expressed concern regarding wildlife and vermin.

Ms. Ford asked Ms. Campbell to clarify from which direction she sees the applicant's property. Ms. Campbell replied that it is the view from her deck as she looks south and identified her view while referencing the photographs submitted by the applicant.

Ms. Greenbaum asked Ms. Campbell whether there were things that could be done to mitigate her concerns. Ms. Campbell stated that a taller fence would help to block the view of the barn. She added that the solid fence is better than the paddock fence regarding what she is able to see. Ms. Campbell stated that removing the manure more frequently seems like it may help to reduce the odor.

Ms. Ford explained to Ms. Campbell that the Board can condition the approval in ways that help to mitigate the negative impacts such as removing the manure frequently or requiring a longer and/or taller fence, for example.

Mr. Simpson asked the applicant why they need space for three (3) horses if they board two of them. Ms. Muerle explained that horses live a long time, and that they will ultimately need to have a permanent home.

Mr. Simpson asked if they could continue to board them somewhere else. Ms. Muerle replied, yes, however, boarding them somewhere else would be very cost prohibitive. She added that as they age, they have more health concerns and require greater attention.

Mr. Simpson asked the applicant whether the solid wood fence was six (6) feet tall or eight (8) feet tall. Mr. Ewart stated that the fence was six (6) feet tall. Mr. Simpson added that the Project Summary and Proposed Findings submitted by the applicant identified the fence as being eight (8) feet tall. Mr. Ewart noted that stating that the fence was eight (8) feet tall was an error and that the fence is definitely six (6) feet tall.

Mr. Simpson asked the Building Commissioner about the requirements for fences located on a property line. Ms. Weeks stated that fences on property lines can be up to six (6) feet in height. A fence taller than six (6) feet would require a Special Permit, but could be incorporated into this application.

Ms. Greenbaum asked the applicant if the barn and/or the addition had a building permit. Ms. Muerle stated that they were not aware that the barn would have required a building permit and stopped constructing the addition when they were informed that they needed a permit.

Ms. Greenbaum asked what triggered the applicant for a Special Permit. Mr. Ewart stated that a Building Inspector stopped by the property on a Saturday morning this fall. The Building Inspector said that he was driving by, saw they were doing some work in the backyard, and informed them that they were required to have a Special Permit in order to keep horses in this zoning district.

Ms. Greenbaum asked the applicant if there was anything they could do to address the concerns of the neighbor.

Ms. Muerle discussed the manure. She stated that the goal is to compost the manure to remove any bacteria in it. She noted that they are careful to ensure that the manure is properly broken down before using it for any other uses, such as fertilizer. She stated that to reduce the odor, they could move it to a new location, or have someone come and pick it up.

Ms. Greenbaum made a motion to close the evidentiary portion of the public hearing. Ms. Ford seconded the motion and the Board voted unanimously to close the public hearing.

Public Meeting:

Town Staff provided the Board members, and applicant, with copies of Special Permit's, ZBA FY2007-00017 and ZBA FY2006-00028.

The Board discussed the number of horses that might be allowed on the property; whether they would allow only one (1) horse or three (3) horses, or no horses at all. The Board was concerned about the boarding of horses, other than the three (3) owned by the applicant, which creates the appearance of a business operation. The Board discussed that they may only allow the keeping of horses owned by the applicant and perhaps fewer than the three (3) requested.

The Board discussed the storing and spreading of manure and the impact of the odor on the neighbor. The Board noted that other Special Permits had required manure to be removed from the site at frequent intervals in order to remove the source of odor. The Board discussed whether relocating the manure would mitigate the odor problem.

The Board also discussed the impact of spreading the manure into the paddock area, including potential health related issues and odor, and using composted manure as fill on other parts of the property.

The Board discussed the concerns of the neighbor related to the aesthetics of the barn, existing fence and paddock area and what, if any, mitigation measures may resolve those concerns. The Board noted that a fence of greater height and length may begin to alleviate the aesthetic issues of the neighbor. The Board discussed requiring a fence taller than six (6) feet along the property line, which requires a Special Permit, and could be included in this Special Permit.

The Board discussed whether or not the barn and the addition to the barn are in accordance with the setbacks established in the Zoning Bylaw. The Board noted that the applicant stated that the barn was eight (8) feet tall and 10 feet from the side property line.

The Board noted that the applicant had not received a building permit for the barn where one is required. The Board noted that the applicant had indicated that the height was to the eave, but the Bylaw measures height of the tallest portion of the building.

Ms. Greenbaum made a motion to continue the public meeting to a date certain, April 2, 2009. Ms. Ford seconded the motion. The Board voted unanimously to continue the public meeting to April 2, 2009.

Continued public meeting – April 2, 2009

Mr. Simpson stated that staff had prepared a preliminary summary from the previous meeting of February 10, 2009. Mr. Simpson stated that based upon the information obtained during the previous meeting, the Board determined the following issues and/or concerns:

- The odor produced by the accumulation and storage of manure;
- The number of animals to be allowed under a Special Permit;
- The ownership of animals;
- The extent of fencing associated with screening of the outbuilding.

The Board determined that the permit should not be denied outright, but rather, should be approved with conditions.

Mr. Simpson stated that the Board has the authority [Section 6.29 of the Zoning Bylaw] to allow a higher fence on the property line than what is allowed by right.

Ms. Greenbaum stated that she reviewed the aerial maps [pictometry viewer] available on the Town's website and noted that the north property line adjacent to the barn should be screened by a fence to block the view from neighbor's property.

The Board determined that there should be an eight (8) foot solid fence installed along the north property line to mitigate the visual impact of the barn, the storage of materials and manure. The Board determined that the fence should extend along the property line to a point 20 feet east of the corner of the existing barn and to the west to the 100 wetlands buffer line that is shown on the site plan.

Mr. Simpson noted that the Zoning Bylaw [Section 5.041] states that the “raising or keeping of livestock or poultry for the use by residents of the premises shall be considered as an accessory use” and that he infers this section to mean that the animals on the property should belong to the residents of the property. He stated that bringing animals belonging to other people, whether there is a fee or not, onto the property violates the spirit of that section of the Bylaw and constitutes a commercial use.

Ms. Ford asked how ownership should be defined, for example, if someone leased an animal. Ms. Greenbaum stated that it should be for personal use.

Regarding the number of horses to consider, Mr. Simpson stated that he understands that horses are companion animals and the Board needs to determine how many horses will be appropriate to keep on the property.

The Board determined that, if an animal is for the personal use of a resident, it meets the intention of the Bylaw. The Board determined that they will permit the keeping of two (2) horses as a compromise to address the problems regarding the impact of the use and the testimony that only one (1) of their own horses is presently boarded on the property. The Board determined that each horse must belong to the current property owners.

Ms. Greenbaum questioned the Board members regarding how the manure kept on the property would be composted or if it is to be removed and how often that should occur.

Mr. Simpson stated that previous decisions of the Zoning Board of Appeals concerning horses have set conditions that require manure be taken off site at regular intervals.

Ms. Ford stated that she feels that the manure should be removed from the property periodically. The Board identified that they would need to establish a specific timeframe for the removal of the manure.

The Board asked the applicant for clarification about their anticipated process for storing manure. Ms. Muerle stated that they would be agreeable to removing it periodically or could store it in a three (3) sided storage container, with a top.

The Board determined that the manure should be kept in a temporary covered container, having a minimum of three (3) sides and that the storage container should not be visible from adjacent properties. The Board determined that the manure should be removed a minimum of once per month, or more frequently to mitigate the odor.

The Board determined that the permit should be granted with a one (1) year expiration date, at which time the applicant would be required to re-apply for either a renewal, or request a modification to the number of horses allowed. The Board determined that the one (1) year expiration will allow for the Board to review, identify, and assess whether the olfactory and visual mitigation have been successful and whether or not additional horses would be suitable on the property.

Public Meeting – Zoning Board Decision

Mr. Simpson made a motion to APPROVE the permit, with conditions. Ms. Greenbaum seconded the motion.

The Board VOTED unanimously to grant a Special Permit for the keeping of two (2) horses under Section 5.014 of the Zoning Bylaw, as applied for by Burt Ewart and Linda Muerle, at 327 Shays Street (Map 20D, Parcel 28, R-N Zone), with conditions.

Public Meeting: May 6, 2009

The Board met to review and discuss the preliminary findings prepared by staff. The Board spent the remainder of the public meeting preparing and finalizing the findings.

Findings:

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood and is compatible with existing uses in the Zoning District. With the conditions as written, the use is suitably located in the neighborhood, as follows: This Special Permit allows for the keeping of two (2) horses, owned by the residents of the property. The Special Permit will expire in one (1) year when a new permit will be required. The use will then be evaluated by the Board, the applicant, and any concerned neighbors through the public hearing process. The limited permit period will provide any neighbors the ability to voice their concerns, and will allow the Board to take testimony and assess how well the mitigation procedures are working.

10.382 and 10.385 – The proposal would not constitute a nuisance and reasonably protects the adjoining premises against detrimental or offensive uses on the site. This permit requires that manure associated with the keeping of horses shall be temporarily stored in a covered three (3) sided container, and removed at least once per month in order to control the potential impact of odor on adjacent properties. The permit requires the installation of a fence that is taller and longer than the existing fence on the property to help screen views of the barn, storage of manure and any visual impact associated with the keeping of horses. This permit limits the number of horses allowed on the property to two (2) animals and does not allow for the boarding of horses not owned by the residents of the property. The permit will expire one (1) year from the date filed with the Town Clerk. For horses to remain on site, the applicant will be required to renew the permit through the public hearing process allowing for review by the Board and input from abutters

10.383 and 10.387 – The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians and the proposal provides convenient and safe vehicular and pedestrian movement within the site and in relation to adjacent streets. This Special Permit requires the erection of a solid fence to reduce the visual impact; all manure produced must be properly stored and removed from the property once a month and; the permit is conditioned to expire in one (1) year in order to evaluate if the negative impact of the use is mitigated. The Special Permit requires the owners of the horses to be responsible for the removal of any manure from any public way in order to maintain the health, safety and general welfare of the residents of the Town of Amherst. Access to and from the paddock has been provided on the site plan. Vehicular and pedestrian movement are not affected by this use.

10.384 – Adequate and appropriate facilities would be provided for the proper operation of the proposed use. The property already is improved with an enclosed paddock area suitable for the keeping of horses. The barn, when completed, will provide adequate areas for the storage of hay and other equipment. Additionally, animal feed is required to be kept in rodent and vermin proof containers and any excess will be stored in the garage attached to the single family dwelling. The Special Permit requires the proper temporary storage of manure and removal at least once per month.

10.389 – The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables and other wastes. This permit requires the removal of manure from the property at least once per month or more frequently if necessary to mitigate odor. The manure shall also be temporarily kept in a covered storage container consisting of a minimum of three (3) sides. The storage container is to be located so that it is not visible from adjacent properties.

10.392 – The proposal provides adequate landscaping, including the screening of adjacent residential uses. This permit requires the erection of a fence that is taller and longer than what is existing. The purpose of this fence is to provide additional screening of the barn structure and manure pile associated with the keeping of horses.

10.395 – The proposal does not create disharmony with respect to the use, scale and architecture of existing buildings in the vicinity. With the conditions as written, the use is generally compatible with the surrounding neighborhood, as follows: This Special Permit requires measures to mitigate the potential impact of the use on adjacent properties. The use is located at the rear of the property. The topography of the land provides adjacent property owners with a view down onto the paddock from a higher elevation. This permit requires the installation of a fence that is taller and longer than the existing fence on the property in order to help mitigate the visual impact of the barn, storage of manure and general visual impact of the horses. This permit requires that horse manure shall be removed at least once per month in order to mitigate the impact of the odor on adjacent property owners. Additionally, the permit requires manure to be temporarily stored in a covered three (3) sided container. This permit limits the number of horses allowed on the property to two (2) animals and does not allow for the keeping of horses not owned by the residents of the property. The permit will expire one (1) year from the date filed with the Town Clerk. The applicant will be required to renew the permit through the public hearing process.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw and it protects the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst. With the conditions as written and enumerated herein, the use is generally compatible with the surrounding neighborhood. The visual and olfactory impact has been addressed by requiring the erection of a taller and longer fence and proper temporary storage of manure and removal of the manure a minimum of once per week.

Mr. Simpson made a motion to APPROVE the findings as discussed. Ms. Ford seconded the motion. The Board VOTED unanimously to approve the findings.

For all of the reasons enumerated above, the Board VOTED unanimously on April 2, 2009, to grant a Special Permit for the keeping of two (2) horses under Section 5.014 of the Zoning Bylaw, as applied for by Burt Ewart and Linda Muerle, at 327 Shays Street (Map 20D, Parcel 28, R-N Zone), with conditions.

THOMAS SIMPSON

BARBARA FORD

HILDA GREENBUAM

FILED THIS _____ day of _____, 2009 at _____,
in the office of the Amherst Town Clerk _____.
TWENTY-DAY APPEAL period expires, _____ 2009.
NOTICE OF DECISION mailed this _____ day of _____, 2009
to the attached list of addresses by _____, for the Board.
NOTICE OF PERMIT or Variance filed this _____ day of _____, 2009,
in the Hampshire County Registry of Deeds.

Town of Amherst **Zoning Board of Appeals**

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit, ZBA FY2009-00021, for the keeping of two (2) horses under Section 5.014 of the Zoning Bylaw, as applied for by Burt Ewart and Linda Muerle, at 327 Shays Street (Map 20D, Parcel 28, R-N Zone), with the following conditions:

1. There shall be no more than two (2) horses kept on the property at any one time. The two (2) horses shall be owned by the residents of the property.
2. A solid fence, eight (8) feet in height, extending 20 feet east from the easterly edge of the barn and west from the westerly edge of the barn to the 100 foot wetland buffer, based upon the site plan, dated November 11, 2008, submitted with the application, shall be installed along the northerly property line and permanently maintained.
3. A revised site plan, of adequate size and scale, showing the location of the fence shall be submitted to the Board for review and approval at a public meeting.
4. A detail of the fence material, including color, material and height, shall be submitted to the Board for review and approval at a public meeting.
5. Manure storage shall be temporary and contained in a covered structure with a minimum of three (3) sides, to minimize odor. The structure shall be located such that it is not visible from abutting properties.
6. Manure shall be removed from the temporary storage structure at least once per month or more frequently as may be necessary for odor control.
7. There shall be no stallions kept on the property.
8. All grains or feed supply shall be kept in rodent and vermin proof containers.
9. All manure produced by the horses of this applicant on any private or public property, or public way, shall be promptly removed by the owner.
10. There shall be no commercial use of the property associated with the keeping of horses.
11. All exterior lighting shall be downcast to prevent the casting of light onto adjacent properties.
12. The property shall be managed according to the Management Plan approved on April 2, 2009.
13. The Special Permit shall expire in one (1) year from the date of filing with the Town Clerk. At which time, the applicant may submit an application for renewal or modification of the Special Permit.

THOMAS SIMPSON, Chair
Amherst Zoning Board of Appeals

DATE